Communiqué

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PRESIDENT'S REPORT
Leadership and Volunteers Presrve Self-Governance

G. Patrick S. Riley
President

This is my first report to you since I was elected President on May 15, 2003.

Having been elected Vice-President, I stood unopposed for election as President, as is customary. My youngest daughter asked if that was not also how Saddam Hussei was elected! I explained that this custom ensures that the in-coming President has a year to be prepared. She seemed satisfied with this explanation.

In fact, the Law Society benefits greatly from the continuity of its leadership. Past Presidents play a important role in this chain of continuity. I know that Lori Spivak is continuing to make a significai contribution of her time in this role (as did Tim Killeen), and I thank her on behalf of all our members.

I also thank the many members who are contributing to the work of the Society's committees. We

are always pleased to add names of members to our list of volunteers who make the Society's work possible. Call Allan today!

Over the past eight years of my time as a Bencher, I have grown to appreciate the importance of preserving our privilege of self-government. A well-run Law Society is the best guarantee of preserving this privilege.

Committee work by our members is the backbone of good management for the Society. We are fortunate in doing this committee work to be so ably assisted by our Law Society staff.

I know our senior staff are held in very high regard by their peers in other provinces. They have taken a significant leadership role in a number of national initiatives, and we can be proud of the quality of their contribution to these initiatives.

Internally, I believe the most important improvement to our Society's operations over the last few years has been in the area of complaints investigation. A commitment to prompt informal responses to complaints has prevented mountains growing out of molehills. Informal mediation by the Society now resolves most complaints.

I have enjoyed my activities so far. In particular, I have appreciated the opportunity to serve on committees considering applications for the positions of Provincial Court Judge and Queen's Bench Master.

I am happy to report that both positions now are paid an appropriate amount considering their important responsibilities. Both the quality and the quantity of applications was impressive. I was n surprised to see the many members who disclosed extensive community volunteer contributions. Lawyers contribute a great deal to their communities this way.

I am looking forward to working with the members over the coming year. Please call me at 988-04 if you have any suggestions.

Bencher Meeting Highlights

Benchers' Road Trip

Allan Fineblit, Q.C.
Chief Executive Officer

On September 5, 2003 the Benchers of the Law Society of Manitoba held a meeting in conjunction with the Western Bar at Clear Lake, Manitoba.

President **Patrick Riley** reported that it had been a relatively quiet summer but that significant progress had been made on restructuring the Federation of Law Societies and that new By-Laws an a new Board of Directors were now in place.

Benchers discussed the rule which requires **prepaid legal services** plans to be "open panel" plans (any lawyer can participate). Manitoba appears to be the only jurisdiction with such a rule. Bencher reviewed the history of the rule with a view to deciding whether we still need it. Those at the meeti

were pretty evenly divided on the issue, so it was agreed to put it over to get more information on tl situation in other jurisdictions.

The major agenda item was an **audit** monitoring report that asked Benchers to decide two importan policy matters. Should the **"self-report"** pilot project become a permanent fixture and should auditors have access to the **general accounts** for the limited purpose of tracking trust transfers or determining if trust money was erroneously being deposited into the general account?

Benchers were reminded that until recently law firms with trust accounts were required to file an annual accountants' report. This was expensive and the quality of the reporting varied considerably Two years ago the Benchers approved a pilot project giving most firms the option of filing a self-report instead. Last year almost 80% of firms chose that option. The experience has been generally good. The quality of the self-report information is excellent, members report they are relatively eas to complete and there is, of course, a significant cost-saving to members. The only downside identified is that the self-reports take considerably more auditor time to review than did the accountant's report, in effect transferring some of the cost from individual firms to the membership generally.

After some discussion the Benchers voted unanimously to retain the self-report option and remove pilot project status.

Benchers discussed auditors having access, for limited purposes, to the general account.

Benchers were advised that most other law societies have rules requiring lawyers to keep general account records and allowing auditors to access those records. As part of a mobility initiative to harmonize the trust account rules among the prairie provinces, it was recommended that Manitoba consider adopting a similar rule. Currently in Manitoba, if auditors feel they need access to the general account and the member won't consent, the matter must go to a meeting of the Complaints Investigation Committee where the member can be ordered to produce the general account records.

Benchers had a lively discussion. Some felt the audit was a significant invasion of privacy and any extension of that required a very substantial justification. Others felt that because every lawyer was responsible for paying for losses clients suffer when a lawyer steals a client's money, there was goc reason for an expanded audit. Some Benchers commented that, in their experience, an effective aud will deter theft. Many Benchers commented that the proposal was to only allow access to the gener account for very limited purposes. One Bencher indicated he would support the concept only if satisfied the draft rules adequately reflected those limits. Ultimately a motion was passed by a substantial majority of the Benchers directing the preparation of rules requiring members to keep general account records and give auditors the authority to access those records for the purpose of tracing trust funds and determining if trust money was being deposited into the general account.

Benchers also discussed a concept being explored in British Columbia to move the **Reimbursemen Fund** to more of an insurance model where clients would pay a small fee on trust transactions to purchase, in effect, insurance against theft. This would have the effect of establishing a right for the client to recover from the fund, as opposed to the current discretionary fund model. There was a cle consensus that Benchers were not attracted to an insurance model which gave the appearance of asking clients to pay to insure their own lawyer's honesty.

Equity Ombudsperson Program Becomes Permanent

Brenlee Carrington Trepel
Equity Ombudsperson

I am pleased to tell you that the Equity Ombudsperson program is no longer a pilot project. This past June, it became a permanent program of the Law Socie of Manitoba. Here is a review of my activities for the first term of the program the period between November 1st, 2001 and December 1st, 2002.

The Equity Ombudsperson provides confidential and neutral assistance to lawyers, support staff working for legal employers, articling students and clier who have concerns about any kind of discrimination or harassment. She cannc reveal to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made. Her only reporting to the Law Society is of a general statistical nature in setting out the number and type of calls received.

The goal of the Equity Ombudsperson is to resolve problems. In doing so, she maintains a neutral position and does not provide legal advice. The Equity Ombudsperson is also available to consult with and assist any private or public law office wanting to raise staff awareness about the importan of a respectful workplace environment. The services of the Equity Ombudsperson are provided frec of charge.

The objectives for the Equity Ombudsperson in the first year of operation of the program included raising public awareness of the service, educating the legal profession about respectful workplace issues, handling individual concerns and complaints about discrimination and harassment, and consulting with members of the profession on respectful workplace issues. I am pleased to report th these objectives have been met. During my first year I participated in numerous speaking engagements involving members of the legal profession, other professionals and members of the public. I wrote a series of articles for the Law Society of Manitoba's newsletter, Communiqué, and for the MBA's newsletter Headnotes and Footnotes. I also developed a brochure about the service that was widely distributed. I was able to communicate with other equity experts and meet with my counterparts from British Columbia, Alberta, Saskatchewan and Ontario. I also attended the Equity and Diversity in the Legal Profession Conference sponsored by the Law Society of Upper Canada.

In terms of contact with individuals who had specific concerns, I received a total of 127 inquiries - 96 from within Winnipeg and 31 from outside Winnipeg. Some contacts resulted in more than one issue being discussed.

The issues addressed included:
General Information: 49
Office Policy Concerns: 14
Discuss or Request a Presentation: 29

Specific issues and concerns:
Discrimination: 18
Harassment
a) sexual harassment: 17

b) workplace harassment: 15

Workplace policies:
Leave Policies: 6
Other Policies: 8

Contact by gender:
Female 52.8%
Male 47.2%

The Equity Ombudsperson program has received a positive response over the last year, and will continue education and outreach initiatives in addition to handling individual concerns and complaints during year two. By establishing the service, the Law Society of Manitoba is sending a positive reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensuring a thriving legal profession in the future.

A Call to the Equity Ombudsperson Is Not a Call to the Law Society

Contact Brenlee Carrington Trepel confidentially
by phone: 942-2002;
or toll-free 1-866-771-2002;
email: brenleecarrington@shaw.ca;
fax: 474-1161;
mail: P.O. Box 2555-Station Main, Winnipeg, Manitoba, R3C 4B3.

You can also visit the Equity Initiatives site at www.lawsociety.mb.ca/equity.htm

Allan's Odds and Ends

1. Remember this time last year you were becoming concerned about the shortage of articling students? What a difference a year makes. There are 64 students currently enrolled in the Bar Admission Course and three or four of them still don't have articling jobs. So if you're lookii for a great student, get in touch with Brenda Silver.

2. Perhaps you have met "Cliff". He used to reside with Doug Paterson in Brandon and be haul out for Law Day every year. He now resides in my office thanks to a **Joe Barnsley/Doug Paterson** conspiracy. Cliff is a wooden cut-out of a wigged and robed barrister with a stick-your-face-here opening suitable for photographs. Cliff is actually quite a nice piece of folk ar and is available for weddings, bar mitzvahs and other suitable photo opportunities.

3. Lay Bencher **Paul Moist** has resigned to pursue his brilliant career as CUPE National President in Ottawa (he has to get elected first but everyone seems pretty sure he will). Lay Benchers make a great contribution to our discussions and Paul was a great champion of our public interest mandate.

4. Last Bencher Bulletin I told you about the fast lawyers I spotted running for a good cause in

the Manitoba marathon. I missed quite a few and got a few things cockeyed, so here is an update. I reported that **Allan Foran** and Jason **Ingimundson** ran the half marathon when in fact they did the full (Allan with his wife, **Audrey Penner**, who I missed entirely). I also missed full marathoners **Gerry Parkinson** and **Tyler Kochanski** and half-marathoners **Crai Murray**, **Pearl Reimer** and **Don Campbell**.

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Practising to Non-Practising:
May 1, 2003 Alexandra Johnson
Aug. 1, 2003 Diane M. Kelly
Aug. 15, 2003 Leslie S.F. Turner
Aug. 28, 2003 Paula P. Hamilton
Sept. 15, 2003 Aliyah Rahaman

Non-Practising to Practising:
July 1, 2003 Terence H. MacKean
Aug. 1, 2003 Timothy W.J. Morrison
Aug. 1, 2003 Alana L. Stevens
Aug. 5, 2003 Anostin V. Grieves
Aug. 5, 2003 Avaline J. Widmer Thrush
Aug. 11, 2003 B. Jean McBride
Aug. 15, 2003 David H.G. Andrews
Aug. 18, 2003 Michele A. Jules
Sept. 1, 2003 Yvan B. Lagasse

Practising to Inactive:
July 1, 2003 Donald M. Hewak
July 2, 2003 A. Gabrielle Battiste
July 21, 2003 Deny Maric
Aug. 1, 2003 Sandra L. Sarto
Aug. 15, 2003 Albert H. Redekopp
Sept. 1, 2003 Elsy Gagne
Sept. 1, 2003 Arthur V. Mauro, Q.C.

Inactive to Practising:
Jan. 1, 2002 Swapna Chandra
July 1, 2003 Dina Bruyere
July 1, 2003 Beatriz Contreras
Aug. 12, 2003 Jessica J. Cogan
Sept. 1, 2003 Donald I. Cochrane
Sept. 1, 2003 Naumaan K. Hameed
Sept. 5, 2003 Peter O. Jachetta
Sept. 15, 2003 Bonnie MacDonald

Transfer from Another Province:
Aug. 13, 2003 Riva J. Richard, Law Society of Upper Canada
Aug. 20, 2003 Susan J. Helenchilde, Law Society of British Columbia

Call to the Bar
Darcy F. Purvis was called to the Bar of Manitoba on August 13, 2003 after successfully completing the requirements of the bar admission course and articling program.

In Memoriam

George Watson Saunders, who passed away on May 7, 2003 at the age of 79. Mr. Saunders received his call to the Bar on May 27, 1948. He began his career as a lawyer with the firm Thorvaldson, Eggertson, Saunders & Co., which firm would later became known as Aikins MacAulay & Thorvaldson. In the early 1970s he left private practise to become general counsel wit the Canadian Premier Life Insurance Company. In 1982 he joined the Royal Bank of Canada as regional counsel for Manitoba. Mr. Saunders retired in 1989. In October, 2000 Mr. Saunders was appointed an Honourary Member of the Law Society.

Warren Shaver Eadie, who passed away on June 27, 2003 at the age of 57. Mr. Eadie received his call to the Bar on June 25, 1974. He practised law in Winnipeg for 13 years. Mr. Eadie resided in Flin Flon, Manitoba at the time of his death.

Federal Privacy Legislation Soon to Affect Lawyers Directly

Darcia Senft
General Counsel

On January 1, 2001, the Personal Information Protection and Electronic Documents Act ("PIPEDA applied to certain kinds of organizations whose activities are generally subject to federal legislative authority (e.g. banks and telecommunications companies). It also applied to organizations that transfer personal information for consideration outside the province. After January 1, 2004 and unless a province has enacted substantially similar displacing legislation acceptable to the federal government, the federal privacy rules will also apply broadly to any organization that collects, uses or discloses personal information in the course of its commercial activities. Even non-profit organizations may engage in some activities that are covered by PIPEDA.

To date, the Province of Manitoba has not enacted or indicated an intention to enact any displacing legislation. Under PIPEDA, an "organization" is defined as including "an association, a partnership a person and a trade union." Therefore, PIPEDA will apply to law corporations, law firms and individual lawyers and practitioners will be required to collect, use, and disclose personal information in compliance with the legislation.

"Personal information" is broadly defined as any information about an identifiable individual but does not include the name, title, or business address or telephone number of an employee of an

organization.

PIPEDA has a broad purpose: to establish rules to govern the collection, use, and disclosure of personal information in a manner that recognizes the right of privacy of individuals regarding their personal information and the need of organizations to collect, use, or disclose personal information for purposes that a reasonable person would consider appropriate.

The right to privacy is distinct from the duty of confidentiality that addresses the obligation to keep confidential any information that has been communicated in circumstances of confidence. Privacy laws focus on an individual's rights over his/her own information. The new privacy compliance legislation is an overlay on the protection of client confidentiality.

The essence of PIPEDA is the presumption that all individuals should consent to the use of their personal information, subject to specific limited exceptions.

It is important to note that there is no "grandfathering" in respect of information that was collected generated before an organization was first affected by the legislation. For example, if an individual did not consent to the use or disclosure of information for a specified purpose when the information was originally collected, PIPEDA having had no application at the time, a current consent to the proposed use must generally be obtained.

Practitioners should become familiar with PIPEDA in order to properly advise their clients who ma be subject to its provisions.

Practitioners should also make sure that their own organizations have privacy policies that deal witl the matters regulated by PIPEDA.

Become informed about what the law requires. Information is available from the website of the Privacy Commissioner of Canada: www.privcom.gc.ca. There is also a CBA FOIP subsection that addressing privacy issues at its meetings. Check it out.

Firms will be required to designate someone to be accountable for the firm's compliance efforts. Decisions should be made regarding how consent will be obtained and consideration should be giv to dealing with the retroactive aspect of the legislation. It would be advisable to begin an audit of th types of personal information that is being collected, used, and disclosed. Information technology systems should be reviewed along with the security precautions that are in place.

The Law Society of Manitoba held a CLE seminar about PIPEDA in February. The program was geared to in-house counsel. Materials may still be purchased.

Please make a note in your diaries that the Law Society is offering another half-day CLE on November 6, 2003 and it will be geared to private practice lawyers. Plan to attend and get up to speed on the requirements of PIPEDA. Bring your questions. This is a program that will be of interest to litigators and solicitors alike.

Schedule 1 to PIPEDA restates the fair information principles and commentary that comprise the Model Code for the Protection of Personal Information approved by the Standards Council of Canada in 1996. Any "privacy principles" review should

take into account the elements of the Model Code which are as follows:

1. Accountability: An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the principles set out below.

2. Identifying Purposes: The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

3. Consent: The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except when inappropriate.

4. Limiting Collection: The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

5. Limiting Use, Disclosure, and Retention: Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for fulfilment of those purposes.

6. Accuracy: Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

7. Safeguards: Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

8. Openness: An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

9. Individual Access: Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

10. Challenging Compliance: An individual shall be able to address a challenge concerning compliance with the above principles to the designated individuals or individuals for the organization's compliance.

Notes from the Woods

Allan Fineblit, Q.C.
Chief Executive Officer

I recently attended a wild party at a cabin in the woods…well, the truth is it wasn't that wild and it wasn't all that woodsy either. Once a year our Benchers hit the road and hold a meeting outside the perimeter, often in conjunction with the Western Bar annual meeting at Elkhorn Resort in Riding Mountain National Park. Not too hard to take.

The weekend includes the Western Bar's annual meeting, a reception in the executive cabin (the sa wild party in the said woods), golf, golf and more golf, and a great dinner with, you guessed it, golf stories and golf prizes.

Law Society Vice-President Bill Johnston, wearing his other hat as "Mr. Golf Guy", did a great Bol Newhart-style telephone conversation with his late partner, Doug Donald, calling Bill on his cell phone from heaven. Bill gave Doug a tongue-in-cheek update on the Western Bar ("Bernie is still Bernie").

Someone at the wild party (I think it was Wolf Riedel) asked me what the burning issues at the Law Society were these days. In fairness, by then I'd had a few drinks and had just finished a very feisty Benchers' meeting. I talked about mobility, the library, the poor investment climate, expanded use technology and the western-Canadian skills-based online Bar Admission Course (does it get much wilder than that?).

Later it occurred to me that none of these were exactly burning issues. Oh…they are all important initiatives, but we've been working on them for a while, have a good business plan to tackle each a every one, and we are pretty much on track in that plan. The truth is that the first thing that came to mind was to say "there are no burning issues" but that's kind of like saying "I'm not too busy". Wo gets out and before long they start wondering why they need to pay so much to someone who does little.

I decided to make a list for myself on the off chance that I ever get invited to another wild party. I realize as I look at the list though that each issue is indeed very broad and very deep and I don't hav a clue what the right thing to do about any of them is. Let me give you just one example.

On my list is the troubling flight of lawyers, especially women, from the practice of law. One outcome of that is that there is now only one woman elected Bencher out of 16. That can't be good. The question is why and what to do about it? That is where it gets tricky.

More than half of the first-year law school class in Manitoba are women. More than half of the graduates are women. When they hit practice, most firms have figured out the great value and importance of recruiting and retaining the best and the brightest graduates, regardless of gender. Some have adopted the Law Society's model policies on part-time work, parental leave and having respectful workplace. We are not overwhelmed with complaints about harassment or discriminatio from female lawyers, although our Equity Ombudsperson reports (elsewhere in this issue) some cal about workplace equity issues. And yet they are leaving. The numbers are indisputable.

Is it possible that the practice of law is generally incompatible with women's temperament and personality? Any parent with children of both genders will swear that there are basic differences tha are not created by how the children are nurtured. Some women do leave practice because it just doesn't suit their personality, but so do some men, and most women lawyers are very comfortable with the practice of law.

Another explanation I've heard is that in spite of less than full-time options, the practice of law is

incompatible with family life, especially for those with young children. This is an issue for some men too, but frankly most of those who leave practice because of it are women. That's the part I don't get. Is it because husbands can't look after children? Is it because they won't? My point is tha having addressed many of the workplace issues that may have contributed to the gender imbalance, is it now within the Law Society's mandate or even within our ability to make some people more nurturing? So…you can see that I do have at least one hard problem to wrestle to the mat. Your advice is always welcome. Call, write or feel free to buttonhole me at the next wild party in the woods.

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, October 23, 2003 at 12:30 p.m.** in the Society's classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of t governing body.

COMMUNIQUÉ BACK ISSUES

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